

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

NATIONAL FEDERATION OF THE BLIND, *et al.*,

Plaintiffs,

v.

Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS,

Defendant.

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTION IN LIMINE TO PERMIT
THE INCARCERATED PLAINTIFFS AND WITNESSES TO WEAR CIVILIAN
CLOTHES AT TRIAL**

The Virginia Department of Corrections (“VDOC” or “Defendant”), by counsel, submits the following in response to Plaintiffs’ Motion *In Limine* to Permit the Incarcerated Plaintiffs and Witnesses to Wear Civilian Clothes at Trial. (ECF Nos. 321, 322.)¹

ARGUMENT

VDOC contends that for security reasons, it is necessary for the incarcerated Plaintiffs and any incarcerated witnesses to be in prison attire and restraints during trial, and that these needs outweigh any potential prejudicial effect. “Prisoners do not have a constitutional right to wear particular clothing in civil trials.” *Ramirez v. Delong*, No. 09-cv-314-bbc, 2010 U.S. Dist. LEXIS 78813, at *2 (W.D. Wisc. July 29, 2010). It is VDOC’s policy that inmates who appear in court are to be in their prison clothing and restraints. It is a security risk for a convicted felon to be unrestrained while in the general population. Similarly, it is a security risk to allow an inmate to appear in civilian clothes, as an inmate must be easily viewable by courtroom deputies. Allowing

¹ Plaintiffs Nacarlo Antonio Courtney and Kevin Muhammad Shabazz are no longer incarcerated.

an inmate to appear in civilian clothes would not make him easily identifiable and increase an opportunity for escape. A further consideration is the fact that this case involves multiple Plaintiffs, not just one, which increases the burden on security personnel and the risks to courtroom security.

While courts have recognized that prison clothing can have some prejudicial effect, any such prejudice would be minimal here. Plaintiffs' claims arise from their incarceration, and their status as prisoners will necessarily be made known to the jury by the facts of the case. *See Tunoa v. Perez*, 700 F. App'x 741, 742 (9th Cir. Nov. 2, 2017) (citing *Duckett v. Godinez*, 67 F.3d 734, 747 (9th Cir. 1995)) ("[P]rison clothing is not inherently prejudicial when the clothing tells the jury something it already knows."). Similarly, any prejudicial effect that may be caused by the Plaintiff being restrained at trial can be reduced through measures such as obscuring the restraints from view of the jury or providing a curative instruction. *See Davidson v. Riley*, 44 F.3d 1118, 1123–24 (2d Cir. 1995) ("[I]f the trial court has in fact evaluated the safety and security concerns, has taken steps to minimize the restraints and their prejudicial effects, and has given a cautionary instruction to the jury, there is likely no denial of due process."). The incarcerated Plaintiffs will also have two additional Plaintiffs with them who are wearing street clothes. It is unlikely that the jury would fail to decide fairly between incarcerated and non-incarcerated Plaintiffs in the same case based on clothing and restraints.

In this instance, Defendants submit that security concerns require that incarcerated Plaintiffs and witnesses attend trial in prison clothing and restraints.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS.

By: /s/ Timothy E. Davis
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record for the Plaintiff.

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